Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	WC Docket No. 03-109
Lifeline and Link-Up		)
	)	

Comments Of The National Consumer Law Center, On Behalf Of And In Conjunction With The Texas Legal Services Center To Refresh The Record

I. Introduction

The National Consumer Law Center ("NCLC"), on behalf of and in conjunction with the Texas Legal Services Center ("TLSC"), files these comments to refresh the record in this Lifeline and Link-Up proceeding, pursuant to the Federal Communications Commission's ("FCC" or "Commission") Public Notice.[1] NCLC originally filed comments on the federal default eligibility income-based criterion and the adoption of rules governing the advertisement of the Lifeline/Link-Up program, in its December 28, 2001 Comments on Federal-State Board's original recommendations that led to this current docket. NCLC also filed comments in this docket in 2003. In these comments to refresh the record, NCLC and Texas Legal Services Center urge the Commission to increase the federal default income-based criterion to 150% and to establish clear rules governing how carriers advertise the Lifeline program.

National Consumer Law Center is a non-profit corporation organized under the
laws of the Commonwealth of Massachusetts in 1971. Its purposes include representing
the interest of low-income people and enhancing the rights of consumers. Throughout its history, NCLC has worked to make utility services (telephone, gas, electricity, and water) more affordable and accessible to low-income households.

Texas Legal Services Center is a statewide Legal Aid program that sponsors the
TexasLawHelp.org website that provides Texans with free information concerning their

[1] FCC DA 07-1241 (rel. Mar. 12, 2007). Published in the Federal Register on July 25, 2007.

legal rights. Pursuant to Texas law, TLSC established a Collaborative Community Network with the State Bar and public libraries known as the Partnership for Legal Access to provide ensure consumers have free access to consumer-oriented legal information.

II. The Lifeline default income-based criterion should be increased from 135% to 150% of the federal poverty guidelines

The current participation rate for the Lifeline program fails to achieve the policy goals set forth in the Communications Act, as amended: (1) to advance the availability of telecommunications services for all Americans; and (2) that consumers in all regions of the Nation, including low-income consumers, should have access to telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged in urban areas.[2]

Current Lifeline participation levels with the 135% of poverty income-eligibility criterion are low and the Commission should move forward with actions to increase program participation including increasing the income-based eligibility criterion to 150% and establish clear rules governing how carriers are to advertise the Lifeline program. According to USAC analysis for Lifeline program participation in 2006,[3] almost half the states have a participation rate of less than 20%[4] and only 5 states have over a 50% participation rate.[5]

Broadening the income-eligibility from 135% to 150% of poverty would reach more struggling low-income families . According to US HHS census analysis, 4.4 million (4.2%) of households have incomes between 126% to 150% of poverty.[6] Another federal low-income utility assistance program, the Low-Income Home Energy Assistance Program (LIHEAP), recognizes that households at 150% of poverty are very much low-income households in need

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[2] See 47 U.S.C. §254.

[3] See USAC map of 2006 Lifeline Participation Rates by State available at http://www.usac.org/_res/documents/li/pdf/li-participation-rate-map-2006.pdf.

[4] States with 2006 participation rates below 10%: HI, NH, MD, WV, TN, AL, AR, LA
States with 2006 participation rates between 10% - 20%: NY, PA, VA, SC, GA, FL, KY, MI, IN, IL, MO, KS. MS, NC, AZ.

[5] States with 2006 participation rates over 50%: AK, CA, CO, MT, ME.

[6] See Tables 1(N) and 1(P) available at http://www.acf.hhs.gov/programs/liheap/data/decennial_census.html.

of assistance and allows states to set income-eligibility at or below the greater of 150% of the Federal Poverty Guidelines or 60 percent of state median income. (42 U.S.C. §8624). Expanding the income-based criterion to 150% is needed because low-income households who would otherwise be eligible through Lifeline-program based eligibility are not necessarily enrolled in these public benefits programs.[7] For example, LIHEAP penetration is tied to scarce annual federal funding of the LIHEAP block grant. There simply is not enough in annual appropriations to meet the need. The need for public housing is also much greater than the availability of the assistance. There are a number of other reasons for why a low-income family may not be participating in various government assistance programs including complex eligibility and application processes, so the income-eligibility criteria remains an important avenue to Lifeline participation and it should be expanded to be consistent with LIHEAP income-eligibility.

In addition to a low level of Lifeline participation, overall telephone penetration rates are lower than they were in March 2002 through July 2003 according to the recent FCC subscribership report.[8] Chart 4 in the report also shows that the lower the household income, the lower the penetration rate. According to Table 4, 93.5% households with incomes between $20,000 to $24,999 have a phone in their unit compared to over 97% when the household income is over $40,000. The percentage drops further when also looking at race. 88.9% of Black and 88.2% of Hispanic households with incomes between $20,000 to $24,999 have a phone in their unit.[9] Thus, recent data support the increase in the default income eligibility to 150% of poverty.

III. State LIHEAP Income Eligibility in 2007 and Residential Heating Costs

The federal Low Income Home Energy Assistance Program (LIHEAP) allows states to set income eligibility for the program at or below the greater of 150% of the Federal Poverty Guidelines or 60 percent of state median income. (42 U.S.C. §8624). In 2007, 36 states set LIHEAP eligibility at or

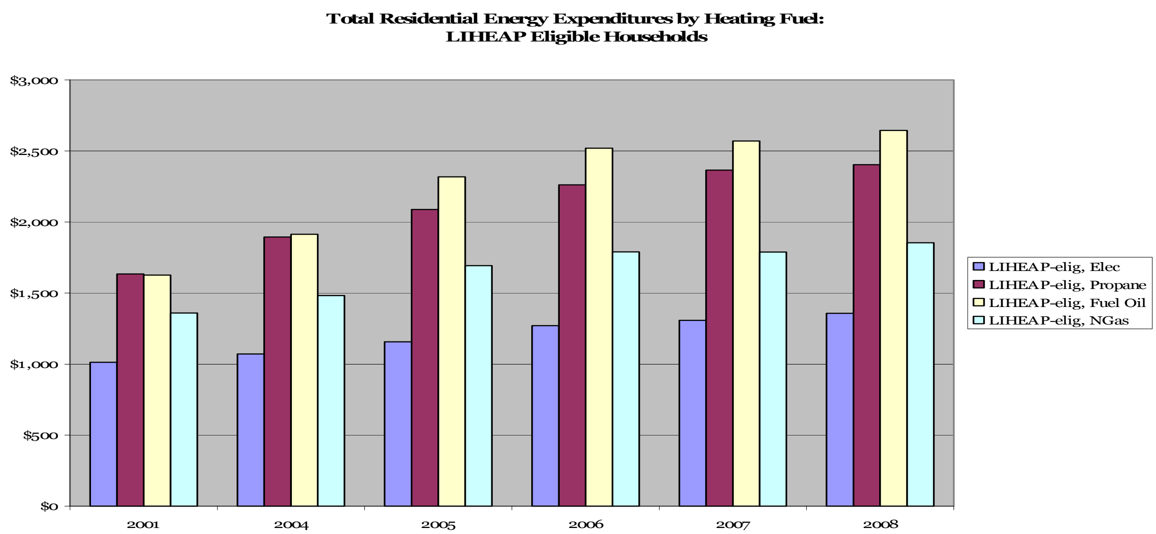
[7] NCLC and TLSC strongly believe that Lifeline penetration rates would also increase if there was coordination between Lifeline and the programs providing program eligibility, such as through automatic enrollment or combined application forms for qualifying programs.

[8] FCC, *Telephone Subscribership in the United States (Data through March 2007)*(June 2007), Chart 1.

[9] The 2007 Federal Poverty Guidelines for a family of three at 150% of poverty is $25,755 for the 48 contiguous states. If we then use $25,000 as a rough cut off for looking at households at 150% of poverty, these households, especially those just below $25,000 have a much lower penetration rate than households above $40,000.

above 150% of poverty[10]. The Commission's adoption of 150% for the default income-eligibility criteria would be in line with how the majority of states set the income criteria for LIHEAP, another low-income federal utility assistance program which also provides program-eligibility for Lifeline in federal default states.

Residential heating expenditures remain at record high levels. According to the Department of Energy's Energy Information Administration's March 2007 Short-Term Energy Outlook, this winter's average residential heating expenditures were projected to be 53% higher for heating oil, 29.6% higher for natural gas, 39.4% higher for propane, and 18.6% higher for electricity than the averaged expenditures for 2000-2005. The cost of home energy is expected to remain at these high levels into the near future. The chart below illustrates the recent dramatic increases in home energy expenditures by heating fuel.



NCLC Construct based on February 2007 Short-term Energy Outlook (DOE-EIA), 2001 - 2007 Population-Weighted Heating and Cooling Degree Day Data (National Oceanic and Atmospheric Administration), and 2001 Residential Energy Consumption Survey (DOE-EIA)

We note a disturbing trend in the FCC Telephone Subscribership in the United States (Data through March 2007) report. Chart 1 shows a recent volatility in telephone penetration starting around November 2004 and continuing through March 2007. The penetration rates appear to dip in

[10] The states are Alaska, Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Iowa, Idaho, Illinois, Indiana, Louisiana, Massachusetts, Maryland, Maine, Minnesota, Mississippi, Montana, North Dakota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Wisconsin, Wyoming and the District of Columbia. Source: State Percent of Poverty Guidelines for LIHEAP Components (FY 2007) compiled by the LIHEAP Clearinghouse. Available at http://liheap.ncat.org/tables/FY2007/POP07.htm.

March and November and go up in July.   It is not clear if this is due to a change in the data reporting or whether this is reflecting an instability in access to phone service, perhaps coinciding with the recent dramatic increase in home heating costs. We encourage the Commission to examine why the penetration rates now appear to fluctuate during the year.

IV. The Commission Should Establish Clear Advertisement Requirements for the ETCs

As was discussed above, the Lifeline participation rates remains very low, overall and there is great variability, depending on the state, in the participation rates.   Critical to increasing participation rates is a more robust outreach effort to promote this important program.   How can consumers apply for Lifeline when they have no idea it exists? In December 2001, many of the recommendations proposed by NCLC[11] regarding Lifeline outreach that appeared in the Joint Board's Recommended Decision and now reside in the current Lifeline guidelines. NCLC had proposed that ETCs shall:

(i) utilize outreach materials and methods designed to reach households that do not currently have telephone service and that therefore do not receive telephone bills;
(ii) develop outreach materials and advertising that can be read or accessed by any sizable non-English speaking population within the ETC service area; and
(iii) coordinate their outreach efforts with governmental agencies that administer any of the government assistance programs listed in section 54.409(b) and any additional programs included when a state adopts its own eligibility criteria.

In addition to those initial recommendations NCLC and TLSC believe that ETCs should also coordinate their Lifeline outreach efforts with Community Based Organizations (CBOs) and agencies serving consumers with disabilities or who have front-line contact with target groups with members who are low-income such as aging organizations. CBOs could also be instrumental in reaching out to harder to reach populations, such as those with a large percentage of non-English speakers.

NCLC and TLSC cautions against an over-reliance on using websites to disseminate information about Lifeline. Low-income

[11] Comments of the National Consumer Law Center on Behalf of the Massachusetts Union of Public Housing Tenants, CC Docket No. 96-45/FCC 01J-2 (Dec. 28, 2001) at section III.

household access to the Internet from the home is still not comparable to higher-income households and access to broadband is even more limited. With that caveat, NCLC and TLSC believe that information about Lifeline should be easy to find on ETC websites and easy to understand as well as in a format that is accessible to people with disabilities.

NCLC and TLSC also support requiring ETCs to provide information about Lifeline and Link-Up to residential customers when they are applying for service and providing information about Lifeline and Link-Up on notices of late payment and pending disconnection.

NCLC and TLSC believe that the ETC outreach and advertising requirements must be more than mere guidelines so that there is uniformity in the level of outreach occurring in the different states and amongst the ETCs. ETCs should be required to annually report Lifeline outreach expenditures by category of outreach activity (as proposed above) and the FCC should set a benchmark of a certain amount of expenditures (e.g., 10 cents per line) to ensure that a baseline of Lifeline outreach activities is occurring. This is critical to improving the Lifeline participation rates.[12]

The FCC in its Public Notice did request comment on whether an ETC should be required to distribute materials in a second language if a certain percentage of the population in a given area speaks a language other than English. This question addresses an important outreach issue. FCC subscribership data show that low-income Hispanic consumers have a lower telephone penetration rate than US households as a whole.[13] While not all Hispanic households have limited English proficiency, census data does show that there is a subset of households that are not proficient in English (this applies to other languages as well as Spanish). Limited English proficient households are particularly hard to reach through outreach and education centered on materials and information conveyed in English. ETCs should, at a minimum, be required to provide, where it markets local phone service in a language other than English, Lifeline and Link-Up notices, outreach materials and customer service

[12] *See also,* Janice A. Hauge, Mark A. Jamison, R. Todd Jewell, "Participation in Social Programs by Consumers and Companies: A Nationwide Analysis of Participation Rates for Telephone Lifeline Programs," (concludes that focusing on increasing awareness about Lifeline could be a low cost alternative to increasing the Lifeline subsidy to achieve the goal of increasing Lifeline participation).

[13] FCC, *Telephone Subscribership in the United States (Data through March 2007)*(June 2007), Chart 4.

representatives fluent in that language who are able to provide information on the Lifeline program.

V. Other Issues

NCLC and TLSC support NASUCA's proposal that the Commission's rules on verification be suspended, investigated and modified to not discourage enrollment by qualifies consumers.[14] NASUCA reports a disturbingly low verification response rate for California and Ohio. NCLC and TLSC also support the NASUCA proposal to switch to statistical sampling of certification customers to reduce the erroneous decertifications and suspension of benefits to Lifeline applicants.

NCLC and TLSC are also supportive of NASUCA's proposal to expand Lifeline/Link-Up to include a nationwide community voicemail program.[15] NCLC had also proposed this in its initial Fed-State comments leading to this current docket.[16]

NCLC also supports NASUCA's proposal re clarification of the Commission's definition of "income" to remove the inclusion of "public assistance benefits" which is in conflict with provisions in the LIHEAP and Food Stamp act.[17]

VI. Conclusion

For the reasons stated above in these comments to refresh the record, NCLC and Texas Legal Services Center urge the Commission to increase the federal default income-based criterion to 150% and to establish clear rules governing how carriers advertise the Lifeline program.

Respectfully submitted,

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[14] Comments of the National Association of State Utility Consumer Advocates to Refresh the Record, In the Matter of Lifeline and Link-Up, WC Docket No. 03-109 at Section V.
[15] Comments of the National Association of State Utility Consumer Advocates to Refresh the Record, In the Matter of Lifeline and Link-Up, WC Docket No. 03-109 at Section VI.
[16] Comments of the National Consumer Law Center on Behalf of the Massachusetts Union of Public Housing Tenants, CC Docket No. 96-45/FCC 01J-2 (Dec. 28, 2001) at section IV.
[17] Comments of the National Association of State Utility Consumer Advocates to Refresh the Record, In the Matter of Lifeline and Link-Up, WC Docket No. 03-109 at Section III.

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